MONTANA LEGISLATIVE HISTORY

Chapter 64 19 71

Bill H _____ S 148 Original bill & history ____C

H. Committee on Business & Industry		S. Committee on Banking & Insurance	
Hearing Date(s) Feb 15	✓C	Hearing Date(s) Feb 02	✓C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

February 2, 1971

The Committee on Banking and Insurance met on February 2, 1971, in room 442 at 10:00 A.M. Roll call was taken and a quorum was present.

The first bill to be considered by the committee was Senate Bill 143. Senator Jack McDonald, sponsor of the bill, explained the intent of his bill and said that Montana needs all of the capital it can get and this bill would provide this opportunity. Albert A. Schlaht, President of the Transwestern Life Insurance Company, Billings, opposed this bill, as he said insurance companies are now investing a great percentage of money or policy reserves in Montana in the form of mortgages, investments and real estate investments and if they were required to invest a certain percentage, they would invest just that percentage required and no more. He stated that right now 149% of their reserves are invested in Montana. He admitted that there are a few free writers who do not put money back into money, but that it would be detrimental if this bill was passed merely to penalize these few as they would then be penalizing the whole insurance industry. He said Montana was a good state to invest in and that the insurance industry should be allowed to invest on the basis of sound prudence, not the basis of regulations. He urged that Montana not be the first state to take this step as it would be detrimental to Montana if all states followed this requirement which they would surely do.

Senator Shea asked what percentage was required in Montana today and it was learned that Montana does not have a statute which requires a certain percentage of reserves to be invested, but that this state is receiving more investments than it would receive if required by percentage. It was stated that Montana has a very favorable investment climate and it was good public relations for an insurance company to invest reserves here.

Proponents and opponents were dismissed from the committee room.

Senate Bill 319 was then placed before the committee. Chadwick H. Smith of the Montana Association of Insurance Agents and American Mutual Alliance appeared in opposition to this bill. He felt the insurance companies should not be regulated as to what insurance and for whom they should write for. He said that they must consider the risks involved in writing insurance on an individual and that emotional circumstances would definitely have a bearing on costs. Senator Shea explained the intent of his bill and agreed that perhaps it should be amended, but that he did not believe a insurance company should be able to force a prospective purchaser of insurance to buy all his insurance from one company, but that the purchaser should be able to select which company he would prefer to handle each particular type of insurance he may carry.

Senate Bill 148 was considered by the committee. Chadwick H. Smith also appeared in support of this bill as did "Sonny"Omholt, Insurance Commissioner for the State of Montana. It was learned that the insurance companies did not oppose this bill.

Proponents and opponents of bills were dismissed and the

committee discussed the bills.

Senator Groff proposed certain amendments to Senate Bill 319, copy of these amendments are made a part of these minutes. Senator Hafferman seconded the adoption of these amendments to Senate Bill 319, and the committee members all voted to support them. Senator Groff then moved that Senate Bill 319 Do Pass As Amended. This motion was seconded by Senator Broeder, put to a vote of the committee and carried unanimously.

Senator Carl then moved that Senate Bill 143 Do Not Pass. This motion was seconded by Senator Hazelbaker, put to a vote of the committee and passed. Senators Hafferman and Shea requested that their opposition to passage of Senate Bill 143 be recorded.

Senator Hazelbaker moved that Senate Bill 148 Do Pass and Senator Carl seconded this motion. The committee members voted on the question and it was agreed that Senate Bill 148 Do Pass.

Action on Senate Bill 173 was reconsidered. Senator Carl requested that action be delayed on this bill as the auditor's office was doing some research on the bill.

House Bill 9 was considered by the committee. This bill had previously been passed out of this committee with a very favorable recommendation. After discussion of amendments which had been proposed, Senator Groff moved that House Bill 9 amendments be adopted. His motion for adoption of amendments was seconded by Senator Goodheart, put to a vote of the committee, and carried. Senator Groff then moved that House Bill 9 Be Concurred In As Amended which motion was seconded by Senator Goodheart, put to a vote and carried unanimously.

There being no further business before the committee, motion was made to adjourn, seconded and carried.

Senator Percy DeWolfe-Chairman

BUSINESS AND INDUSTRY COMMITTEE

February 15, 1971

The nineteenth meeting of the Business and Industry Committee was held Monday morning at 10:30 in Room 433-4 of the State Capitol Building with Chairman Worden presiding.

All members were present with the exception of Representatives Jackson, McGrath, Mehrens, Olson and Patrick.

Senate Bill 139 was presented by Senator Stephens, sponsor. Proponents were E. V. "Sonny" Omholt, State Auditor, and Chadwick H. Smith representing American Mutual Insurance Alliance. There were no opponents.

Proponents for Senate Bill 148 were E. V. "Sonny" Omholt, State Auditor, and Chadwick H. Smith, representing American Mutual Insurance Alliance.

Senate Bill 318 was presented by Senator Shea. Opponents were Chadwick H. Smith representing American Mutual Insurance Alliance and John H. Risken representing American Insurance Association.

Senate Bill 220 was presented by Senator Thiessen. Doyle B. Saxby representing the Department of Administration appeared as a proponent.

Action was then taken on the following bills:

SB139...Rep. Spilde moved DO PASS. Motion carried.

SB148...Rep. Eggebrecht moved DO PASS. Motion carried.

SB220...Rep. Nelstead moved DO PASS. Motion carried.

SB318...Rep. Burnett moved do pass. He then withdrew his motion in favor of passing for the day, which motion was carried.

The meeting adjourned at 11:25 A.M.

H. O. WORDEN, Chairman

tion by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Immunity from liability.

Section 17. **Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

Stay of proceedings.

60 days.

Default judgments.

Application to set aside.

Defend on merits.

Section 18. **Stay of proceedings; reopening of default judgments.** All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

Approved February 27, 1971.

CHAPTER NO. 64

An Act to Provide for Control and Regulation of the Affairs of Insurance Holding Companies; Prescribe Rules and Regulations Governing Acquisition and Disposal of Insurance Holding Companies; Subjecting Domestic Insurers to Examination by the Insurance Department; Providing for Application to be Made to the Insurance Commissioner to Approve Certain Transactions; Providing for Judicial Review; Defining Terms;; and Providing Penalties; Repealing Sections 40-5501 through 40-5508, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Definitions.

Section 1. **Definitions.** As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

"Affiliate." "Affiliated."

(a) **Affiliate.** An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Commissioner."

(b) **Commissioner.** The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

"Control." "Controlling." "Controlled by." "Under common control with."

(c) **Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Presumption.

Rebuttal.

Determination by commissioner.

"Insurance holding company system."

(d) **Insurance holding company system.** An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

"Insurer."

(e) **Insurer.** The term "insurer" shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"Person." (f) **Person.** A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

"Security holder." (g) **Securityholder.** A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

"Subsidiary." (h) **Subsidiary.** A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one (1) or more intermediaries.

"Voting security." (i) **Voting security.** The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

Domestic insurer may organize subsidiaries.

Section 2. **Subsidiaries of insurers.** (a) **Authorization.** Any domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:

Kinds of business enumerated.

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

(8) Ownership and management of assets which the parent corporation could itself own or manage.

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

(10) Financing of insurance premiums, agents and other forms of consumer financing.

(11) Any other business activity determined by the commissioner to be reasonable ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more of the businesses specified in this section.

(b) **Additional investment authority.** In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also: Authorized investments.

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of five percent (5%) of such insurer's assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation. Subsidiary securities—limitations on amounts. Calculation.

Liabilities less than 10% of assets.

(2) If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten percent (10%) of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Reasonable surplus.

Subsidiary limitation of investments.

(3) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this clause, "the total investment of the insurer" shall include:

Investments included.

(i) Any direct investment by the insurer in an asset.

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

Approval of commissioner.

(4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Reasonable surplus.

Subsidiary.

Management of property.

(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

Reasonable surplus.

Exemptions.

(c) **Exemption from investment restrictions.** Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers.

Determination of qualified investments.

(d) **Qualification of investment — when determined.** Whether any investment pursuant to subsection (b) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

Disposal on cessation of control.

(e) **Cessation of control.** If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the commissioner thereof.

Section (3). **Acquisition of control of or merger with domestic insurer.** (a) **Filing requirements.** No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner herein-

Acquisition of control limited to issuer.

Merger or control.

Required filing.

Statement.

Domestic insurer defined.

after prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

Statement made under oath.

(b) **Content of statement.** The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

Mandatory information.

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

"Acquiring party."

Occupation.

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years.

Business operations.

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

Consideration.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

Financial information.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

Plans for proposals.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

Number of shares.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

Amount of each class.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

Description of transactions.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

Description of purchases.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

Description of recommendations to purchase.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

Copies of all tenders.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

Broker-dealer contracts.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

Other information.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

Commissioner may require information from each person.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

Amendments.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

Filing.

Alternative documents.

(c) **Alternative filing materials.** If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a regis-

tration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

Use.

Public hearing—approval.

Determinations by commissioner.

(d) **Approval by commissioner — hearings.** (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer.

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

Hearing within 20 days of filing.

(2) The public hearing referred to in clause (1) shall be held within thirty (30) days after the statement re-

quired by subsection (a) is filed, and at least twenty (20) days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

Notices required.

Decision within 30 days.

Rights at hearing.

Discovery proceedings.

(e) **Mailing to shareholders — payment of expenses.** All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

Required mailing to shareholders.

Expenses.

Bond or deposit.

(f) **Exemptions.** The provisions of this section shall not apply to:

Exemptions.

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

Unissued securities.

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for

By order of commissioner.

the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

(g) **Violations.** The following shall be violations of this section:

Violations.

(i) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b).

Failure to file.

(ii) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

No approval.

(h) **Jurisdiction — consent to service of process.** The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

Jurisdiction.

Commissioner is attorney for service of process.

Procedure.

Section 4. **Registration of insurers.** (a) **Registration.** Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration,

Mandatory registration.

Exceptions.

Within 60 days.

Within 15 days.

Extension. Commissioner may require copy of out-of-state registration.

and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

Forms.

Required information.

(b) **Information and form required.** Every insurer subject to registration shall file a registration statement on a firm provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company.

(iv) All matters concerning transactions between registered insurers and any affiliates as may be included

from time to time in any registration forms adopted or approved by the commissioner.

Information not deemed material.

(c) **Materiality.** No information need be disclosed on the registration statement filed pursuant to section 4 (b) if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half (1/2) of one percent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

Amendments.

Forms.

(d) **Amendments to registration statements.** Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of section 5, each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

Termination.

(e) **Termination of registration.** The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

Consolidated registration.

(f) **Consolidated filing.** The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

Insurer may register for affiliate.

(g) **Alternative registration.** The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

Exemptions.

(h) **Exemptions.** The provisions of this section shall not apply to any insurer, information or transaction if

and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

Filing disclaimer of affiliation.

(i) **Disclaimer.** Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

Effect.

Disallowance after hearing.

Violation.

(j) **Violations.** The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

Section 5. **Standards.** (a) **Transactions with affiliates.** Material transactions by registered insurers with their affiliates shall be subject to the following standards:

Required standards.

Terms.

(1) The terms shall be fair and reasonable.

Accounts.

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

Reasonable surplus.

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) **Adequacy of surplus.** For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

Determination of adequacy.

Size.

(1) The size of the insurer as measured by its assets,

capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

Diversification.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

Risks.

(3) The number and size of risks insured in each line of business.

Dispersion.

(4) The extent of the geographical dispersion of the insurer's insured risks.

Reinsurance.

(5) The nature and extent of the insurer's reinsurance program.

Investments.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

Trend in surplus.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

Comparability.

(8) The surplus as regards policyholders maintained by other comparable insurers.

Reserves.

(9) The adequacy of the insurer's reserves.

Investments in subsidiaries.

(10) The quality and liquidity of investments in subsidiaries made pursuant to section 3. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

Approval prior to payment of extra dividends.

(c) **Dividends and other distributions.** No insurer subject to registration under section 6 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty (30) day period.

30 day notice.

Approval within 30 days.

Extraordinary dividend defined.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of ten percent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer,

if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve (12) month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Declaration.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty (30) day period referred to above.

Approval.

Section 6. **Examination.** (a) **Power of commissioner.** Subject to the limitation contained in this section and in addition to the powers which the commissioner has under sections 40-2713, 40-2714, 40-2715, 40-2716, 40-2717, R.C.M., 1947, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

Power to order production of records.

Power to examine.

Limitation.

(b) **Purpose and limitation of examination.** The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

Retainers.

(c) **Use of consultants.** The commissioner may retain at the registered insurer's expense such attorneys, actuaries. accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

Expenses.

(d) **Expenses.** Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination.

Confidential information.

Section 7. **Confidential treatment.** All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 and all information reported pursuant to section 4, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

Not subject to subpoena.

Consent.

Hearing.

Publication.

Rules.

Section 8. **Rules and regulations.** The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

Commissioner may seek injunction.

Section 9. **Injunctions — prohibitions against voting securities — sequestration of voting securities.** (a) **Injunctions.** Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Limitations on voting rights.

(b) **Voting of securities — when prohibited.** No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meet-

ing, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court for Lewis and Clark county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 5 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Insurer or commissioner may seek injunction.

(c) **Sequestration of voting securities.** In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the district court for Lewis and Clark county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

District court may sequester voting securities.

Situs of ownership.

Section 10. **Criminal proceedings.** Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district court for

Willful violations.

the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this article may be fined not more than five thousand dollars ($5,000). Any individual who willfully violates this article may be fined not more than five hundred dollars ($500) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years or both.

Penalties.

Section 11. **Receivership.** Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

Power to take possession.

Section 12. **Revocation, suspension, or nonrenewal of insurer's license.** Whenever it appears to the commissioner than any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Power to suspend, revoke or not renew licenses.

Section 13. **Judicial review — mandamus.** (a) Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this article may appeal therefrom to the district court for Lewis and Clark county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

Appeal.

Trial de novo.

Stay of proceedings.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

Petition for writ of mandamus.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Lewis and Clark county for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

Laws superseded.

Section 14. **Conflict with other laws.** All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

Severability clause.

Section 15. **Separability of provisions.** If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable.

Approved February 27, 1971

CHAPTER NO. 65

An Act to Amend Section 87-117, R.C.M., 1947, to Increase the Per Diem Pay of Members of the Employment Security Commission.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 87-117, R.C.M., 1947, is amended to read as follows:

Employment security commission created.

Three members—appointment.

"87-117. **Employment security commission—organization.** There is hereby created a commission to be known as the employment security commission of Montana. The commission shall consist of three (3) members who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of

Term of office.

the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of *twenty dollars ($20)* per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of *one thousand dollars ($1,000)*. The third member of the commission, who shall be designated as a chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance, or nonfeasance in office."

$20 per day.

Limitation $1,000 per year.

Chairman.

Salary.

Limitation.

Governor may remove for cause.

Approved February 27, 1971.

CHAPTER NO. 66

An Act to Amend Sections 11-1814 and 16-3705, R.C.M., 1947, to Provide for the Waiving of Residency Requirements for Police Officers, Deputy Sheriffs or Marshals.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 11-1814, R.C.M., 1947, is amended to read as follows:

Qualifications for policemen.

"11-1814. **Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of

21 to 40 years of age.

Power to retire at 65.

25 years service.

Disabled.